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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062064
Party	Plaintiff Mark M. Youssef
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Date	10/20/2015
Attachments	TTAB.Answer(YSF-302).pdf(1373805 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mark M. Youssef,  
Petitioner and Counterdefendant

v.

Younique, LLC,  
Registrant and Counterclaimant

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)  
) Cancellation No. 92062064  
)  
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) Reg. No.: 4,504,512  
)  
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) Mark: YOUNIQUE PRODUCTS  
)

**PETITIONER AND COUNTERDEFENDANT'S ANSWER TO REGISTRANT AND  
COUNTERCLAIMANT'S COUNTERCLAIMS**

In reply to the Counterclaims made by the Registrant and Counterclaimant in the above-identified Cancellation Action, the Petitioner and Counterdefendant answers, as follows:

1. In reply to Paragraph 15 of the Registrant's Counterclaims, no answer is required to the statements made therein. Therefore, no answer is being offered in this regard.

2. In reply to Paragraph 16 of the Registrant's Counterclaims, the Petitioner admits that it is the owner of Application Serial No. 86/446,733 for the mark YOUNIQUE.

3. In reply to Paragraph 17 of the Registrant's Counterclaims, the Petitioner admits that its application covers non-medicated cosmetics in International Class 3 and cosmetics

containing a medication in International Class 5. No other classes of goods are listed in Petitioner's application.

4. In reply to Paragraph 18 of the Registrant's Counterclaims, the Petitioner admits that it has asserted its application against Yunique in this proceeding.

5. In reply to Paragraph 19 of the Registrant's Counterclaims, the Petitioner points out that, between the Petitioner and the Registrant, the Petitioner was the first to use the YOUNIQUE trademark in interstate commerce with regard to non-medicated cosmetics in International Class 3 and cosmetics containing a medication in International Class 5. Therefore, the Petitioner strongly denies the allegation of the Registrant that it has been and will continue to be damaged by Petitioner's application or that the manner in which the Petitioner has prosecuted its application constitutes a fraud on the U.S.P.T.O.

6. In reply to Paragraph 20 of the Registrant's Counterclaims, the Petitioner admits that when he filed his application on November 6, 2014, he represented to the U.S.P.T.O. that he used the YOUNIQUE mark in interstate commerce in connection with non-medicated cosmetics, namely, facial cleansers, skin moisturizing creams, lotions and toners, facial masks and scrubs, anti-bruising gels and creams, make-up, make-up remover, skin foundation, eye cream and eyelash conditioner in International Class 3.

7. In reply to Paragraph 21 of the Registrant's Counterclaims, the Petitioner admits that in his application filing, he represented to the U.S.P.T.O. that he had used the YOUNIQUE

mark in interstate commerce on or in connection with cosmetics containing a medication, namely, facial cleansers, skin moisturizing creams and lotions, acne creams and lotions, acne creams and pre-saturated pads containing acne medication, liquid eyelash conditioner and growth enhancers, skin lightening creams, post-laser burn creams, sun block and sun screen liquids, eye creams, facial masks, shaving cream and skin bleaching cream in International Class 5.

8. In reply to Paragraph 22 of the Registrant's Counterclaims, the Petitioner admits that all of the non-medicated cosmetics and cosmetics containing a medication as recited in Paragraphs 20 and 21 of Registrant's Counterclaims remain within the goods covered in Petitioner's application.

9. In reply to Paragraph 23 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegations that he has never used the YOUNIQUE mark in interstate commerce with many of the "non-medicated cosmetics" and "cosmetics containing a medication" included within Petitioner's application.

10. In reply to Paragraph 24 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegations that he never used the YOUNIQUE mark in interstate commerce on or in connection with products included in Petitioner's application, namely, facial masks, anti-bruising gels and creams, make-up, skin foundation, and eyelash conditioner (in International Class 3), and liquid eyelash conditioners and growth enhancers, post-laser burn creams, sun screen liquid, facial masks, shaving cream, and skin bleaching creams (in Class 5).

11. In reply to Paragraph 25 of the Registrant's Counterclaims, even if the Petitioner is not currently using his YOUNIQUE mark in connection with all of the products listed in Paragraph 24 of the Registrant's Counterclaims, the Petitioner denies that he has stopped using or has abandoned his YOUNIQUE mark on these products.

12. In reply to Paragraph 26 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation that he has knowingly included misstatements in his application in order to broaden his federal trademark rights for the YOUNIQUE mark.

13. In reply to Paragraph 27 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation that he made misrepresentations that were fraudulent and knowingly asserted.

14. In reply to Paragraph 28 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation that his statements were willfully false, without excuse, concern material representations, and demonstrate a reckless disregard for the truth.

15. In reply to Paragraph 29 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation of his deceptive intent and reckless disregard in this matter.

16. In reply to Paragraph 30 of the Registrant's Counterclaims, the Petitioner strongly denies that discovery will reveal evidence of the Petitioner's intent to deceive the U.S.P.T.O.

17. In reply to Paragraph 31 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation that false, willful, material, and fraudulent representations are included within Petitioner's application.

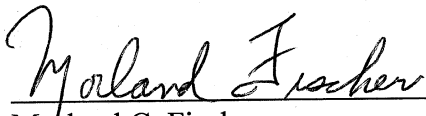
18. In reply to Paragraph 32 of the Registrant's Counterclaims, the Petitioner strongly denies the Registrant's allegation of his knowingly making false, willful, material and fraudulent representations in Petitioner's application.

19. In reply to Paragraph 33 of the Registrant's Counterclaims, the Petitioner once again strongly denies the Registrant's allegation of his knowingly making false, willful, material and fraudulent representations and further denies that Petitioner's application should be withdrawn and cancelled in its entirety.

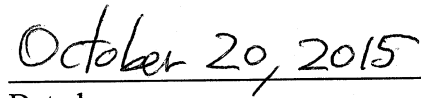
Registrant's allegations listed in Paragraphs 15-33 are actually affirmative defenses rather than counterclaims. Notwithstanding the foregoing, the evidence will show that the Petitioner used his YOUNIQUE trademark prior to the Registrant for goods in International Classes 3 and 5, that the goods of the Petitioner and the Registrant are substantially identical, that the trademarks of the Petitioner and the Registrant which each include the word YOUNIQUE are substantially identical, and that the goods of the Petitioner and the Registrant are advertised and sold in identical trade territories, whereby consumers who purchase and use the goods of the Petitioner and Registrant are likely to be confused as to the respective sources thereof. Therefore, as originally requested in his Petition For Cancellation, the Petitioner once again prays

that his Petition For Cancellation be granted and that Trademark Registration No. 4,504,512 be cancelled.

Respectfully submitted,



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Dated


## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this within action; my business address is Law Offices of Morland C. Fischer, 2030 Main Street, Suite 1300, Irvine, California 92614. On October 20, 2015, the attached PETITIONER AND COUNTERDEFENDANT'S ANSWER TO REGISTRANT AND COUNTERCLAIMANT'S COUNTERCLAIMS was served electronically and by First Class Mail, postage prepaid, on counsel for Petitioner/Counterdefendant as follows:

trademark@proskauer.com

Adam D. Siegartel  
Proskauer Rose LLP  
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New York, New York 10036

Executed on October 20, 2015 at Irvine, California. I declare under penalty of perjury that the above is true and correct.

  
Janis Foreman